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OPEN MEETING ITEM

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MARC SPITZER - Chairman
 WILLIAM A. MUNDELL
 JEFF HATCH-MILLER
 MIKE GLEASON
 KRISTIN K. MAYES



ARIZONA CORPORATION COMMISSION

ORIGINAL
 BRIAN C. MCNEIL
 Executive Secretary
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ARIZONA CORPORATION COMMISSION
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DATE: OCTOBER 6, 2003

DOCKET NO: T-4165A-03-0094

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amanda Pope.
 The recommendation has been filed in the form of an Order on:

EXERGY GROUP, INC.
 (CC&N/RESELLER)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

OCTOBER 15, 2003

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

OCTOBER 21, 2003 and OCTOBER 22, 2003

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250.

Arizona Corporation Commission

DOCKETED

OCT 06 2003

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BRIAN C. MCNEIL
 EXECUTIVE SECRETARY

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This document is available in alternative formats by contacting Yvonne McFarlin, ADA Coordinator, voice phone number 602-542-3931, E-mail YMcFarlin@cc.state.az.us

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2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 COMMISSIONERS

4 MARC SPITZER, Chairman
5 WILLIAM A. MUNDELL
6 JEFF HATCH-MILLER
7 MIKE GLEASON
8 KRISTIN K. MAYES

9 IN THE MATTER OF THE APPLICATION OF
10 EXERGY GROUP, INC. FOR A CERTIFICATE OF
11 CONVENIENCE AND NECESSITY TO PROVIDE
12 COMPETITIVE RESOLD INTEREXCHANGE
13 TELECOMMUNICATIONS SERVICES, EXCEPT
14 LOCAL EXCHANGE SERVICES

DOCKET NO. T-04165A-03-0094

DECISION NO. _____

ORDER

15 Open Meeting
16 October 21 and 22, 2003
17 Phoenix, Arizona

18 **BY THE COMMISSION:**

19 Having considered the entire record herein and being fully advised in the premises, the
20 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

21 FINDINGS OF FACT

22 1. On February 14, 2003, Exergy Group, Inc. ("Applicant" or "Exergy") filed with the
23 Commission an application for a Certificate of Convenience and Necessity ("Certificate") to provide
24 competitive resold interexchange telecommunications services, except local exchange services,
25 within the State of Arizona.

26 2. Applicant is a switchless reseller that purchases telecommunications services from a
27 variety of carriers for resale to its customers.

28 3. In Decision No. 58926 (December 22, 1994), the Commission found that resold
telecommunications providers ("resellers") are public service corporations subject to the jurisdiction
of the Commission.

4. Exergy has authority to transact business in the State of Arizona.

5. On July 9, 2003, Exergy filed an Affidavit of Publication indicating compliance with
the Commission's notice requirements.

1 6. On August 29, 2003, the Commission's Utilities Division Staff ("Staff") filed a Staff
2 Report, which includes Staff's fair value rate base determination in this matter and recommends
3 approval of the application subject to certain conditions.

4 7. In the Staff Report, Staff stated that Exergy provided financial statements for the
5 period ending August 11, 2003, which list assets of \$804,177, negative equity of \$475,647, and a net
6 loss of 649,147.

7 8. In its Staff Report, Staff stated that based on information obtained from the Applicant,
8 it has determined that Exergy's fair value rate base ("FVRB") is zero. Staff has determined that
9 Applicant's FVRB is too small to be useful in a fair value analysis and is not useful in setting rates.
10 Staff further stated that in general, rates for competitive services are not set according to rate of return
11 regulation, but are heavily influenced by the market. Staff recommended that the Commission not set
12 rates for Exergy based on the fair value of its rate base.

13 9. Staff believes that Exergy has no market power and that the reasonableness of its rates
14 will be evaluated in a market with numerous competitors. In light of the competitive market in which
15 the Applicant will be providing its services, Staff believes that the rates in Applicant's proposed
16 tariffs for its competitive services will be just and reasonable, and recommends that the Commission
17 approve them.

18 10. Staff recommended approval of Exergy's application subject to the following:

19 (a) The Applicant should be ordered to comply with all Commission rules, orders,
20 and other requirements relevant to the provision of intrastate telecommunications
21 service;

22 (b) The Applicant should be ordered to maintain its accounts and records as
23 required by the Commission;

24 (c) The Applicant should be ordered to file with the Commission all financial and
25 other reports that the Commission may require, and in a form and at such times as the
26 Commission may designate;

27 (d) The Applicant should be ordered to maintain on file with the Commission all
28 current tariffs and rates, and any service standards that the Commission may require;

 (e) The Applicant should be ordered to comply with the Commission's rules and
modify its tariffs to conform to these rules if it is determined that there is a conflict

between the Applicant's tariffs and the Commission's rules;

(f) The Applicant should be ordered to cooperate with Commission investigations of customer complaints;

(g) The Applicant should be ordered to participate in and contribute to a universal service fund, as required by the Commission;

(h) The Applicant should be ordered to notify the Commission immediately upon changes to the Applicant's address or telephone number;

(i) If the Applicant, at some future, date wants to collect from its customers an advance, deposit, and/or prepayment, it must file information with the Commission for Staff review. Upon receipt of such filing and after review, Staff would forward its recommendations to the Commission;

(j) The Applicant's interexchange service offerings should be classified as competitive pursuant to A.A.C. R14-2-1108;

(k) The Applicant's maximum rates should be the maximum rates proposed by the Applicant in its proposed tariffs. The minimum rates for the Applicant's competitive services should be the Applicant's total service long run incremental costs of providing those services as set forth in A.A.C. R14-2-1109; and

(l) In the event that the Applicant states only one rate in its proposed tariff for a competitive service, the rate stated should be the effective (actual) price to be charged for the service as well as the service's maximum rate.

11. Staff further recommended that Exergy's Certificate should be conditioned upon the Applicant filing conforming tariffs in accordance with this Decision within 365 days of the effective date of this Decision, or 30 days prior to providing service, whichever comes first.

12. Staff recommended that if the Applicant fails to meet the timeframes outlined in Findings of Fact No. 11, that Exergy's Certificate should become null and void without further Order of the Commission, and that no time extensions for compliance should be granted.

13. The rates proposed by this filing are for competitive services.

14. Staff's recommendations as set forth herein are reasonable.

15. Exergy's fair value rate base is zero.

CONCLUSIONS OF LAW

1. Applicant is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

2. The Commission has jurisdiction over Applicant and the subject matter of the application.

3. Notice of the application was given in accordance with the law.

4. Applicant's provision of resold interexchange telecommunications services is in the public interest.

5. Applicant is a fit and proper entity to receive a Certificate as conditioned herein for providing competitive resold interexchange telecommunications services in Arizona.

6. Staff's recommendations in Findings of Fact Nos. 8, 9, 10, 11, and 12 should be adopted.

7. Exergy's fair value rate base is not useful in determining just and reasonable rates for the competitive services it proposes to provide to Arizona customers.

8. Exergy's rates, as they appear in its proposed tariffs, are just and reasonable and should be approved.

ORDER

IT IS THEREFORE ORDERED that the application of Exergy Group, Inc. for a Certificate of Convenience and Necessity for authority to provide competitive resold interexchange telecommunications services, except local exchange services, is hereby granted, conditioned upon its compliance with the conditions recommended by Staff as set forth in Findings of Fact Nos. 10, 11 and 12 above.

IT IS FURTHER ORDERED that Staff's recommendations set forth in Findings of Fact Nos. 8, 9, 10, 11 and 12 above are hereby adopted.

IT IS FURTHER ORDERED that Exergy Group, Inc. shall comply with the adopted Staff recommendations as set forth in Findings of Fact Nos. 10 and 11 above.

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IT IS FURTHER ORDERED that if Exergy Group, Inc. fails to meet the timeframes outlined in Findings of Fact No. 11 above, that the Certificate conditionally granted herein shall become null and void without further Order of the Commission.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2003.

BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT _____

DISSENT _____
AP:mj

1 SERVICE LIST FOR: EXERGY GROUP, INC.

2 DOCKET NO.: T-04165A-03-0094

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